They also found that the respondent:—

"Knowing that there has been a notice in writing from Pillai & Co. to his firm J.T.C.Y. & Co. of their intention to withdraw the appeal, on inquiry from Mr. Justice Tan Ah Tah had replied or given the impression that no such letter had been written by Pillai & Co. about the withdrawal of the appeal."

They were accordingly of the opinion that the respondent "had been guilty of grossly improper conduct in the discharge of his professional duty in that he had wilfully or rashly misled the court" into believing that Pillai & Co. had not written to J.T.C.Y. & Co. notifying Pillai & Co.'s intention to withdraw the appeal.

It will be seen therefore that the disciplinary committee made no finding with regard to the charge arising out of the proceedings before the Federal Court on the 20th September 1965 and gave no opinion as to the conduct of the respondent on that occasion and we accordingly propose to deal with the present application, as indeed have counsel representing the respondent and the Advocates and Solicitors Society, on the basis of the report of the disciplinary committee.

We have set out at length and in great detail the matters that are relevant because in our opinion it is essential that any tribunal enquiring into the conduct of a practising member of the legal profession should arrive at a determination on a full consideration of all the available material before it. It is also, in our opinion, necessary for such a tribunal to be satisfied upon the evidence placed before it that a specified charge which the practising advocate and solicitor has been required to meet has been made out.

Having regard to these considerations we are not satisfied on the evidence that the respondent wilfully misled the Federal Court into believing that Pillai & Co. had not written to his firm to notify his firm of the intention of Pillai & Co.'s clients to withdraw the two appeals. We have come to this conclusion because of the protracted correspondence between them, which correspondence dealt also with matters other than the withdrawal of these two appeals. Another reason is the discussion that took place in the High Court building between the respondent and Mr. Narayanasamy which, in our opinion, supports the respondent's version that he was expecting to do nothing before the Federal Court on the 13th September other than to obtain an appointed date when the two appeals would be dealt with. It was never in dispute that he did not have with him in court the files relating to these appeals and that this was his first experience before the Federal Court. His explanation before the disciplinary committee and earlier on to the bar committee is simply that he had forgotten about the letter from Pillai & Co. and having regard to all the material before us it seems to us that we ought not to reject it unless we are satisfied that the explanation is untrue or incapable of belief.

We are fortified in the view we take because of the ambiguous nature of the disciplinary committee's finding which was that the respondent had "wilfully or rashly" misled the Federal Court. This finding would appear to be inconsistent with the disciplinary committee's other finding that the respondent "knowing that there has been a notice in writing from Pillai & Co. to his firm J.T.C.Y. & Co. of their intention to withdraw the appeal, on inquiry from Mr. Justice Tan Ah Tah had replied or given the impression that no such letter had been written by Pillai & Co. about the withdrawal of the appeal". Moreover this finding of "knowledge" was merely an inference made by the disciplinary committee from the "nature and tone" of the correspondence between the two solicitors' firms between 12th July and 5th August 1965. It would seem, therefore, that the disciplinary committee had some doubts about their finding of "knowledge".

With regard to the charge relating to the proceedings before the Federal Court on the 20th September the available evidence seems to us to be so scanty that it would in our opinion be wrong to find the respondent guilty of grossly improper conduct in the discharge of his professional duties on such scanty evidence.

In the result we would make no order on the application. As regards costs we need hardly add that we would make no order because these proceedings could have been avoided had the respondent, when before the Federal Court on the 20th September 1965, tendered an unqualified apology for his unfortunate lapse of memory a week previously.

Order accordingly.

YAP SUAT TEE & ORS. v. COLLECTOR OF LAND REVENUE

[Appeals Board (Choor Singh J., Commissioner of Appeals) June 1, 1968]

[Singapore — Interlocutory Application No. 1 of 1967]

Land Law — Land acquisition — Land acquired for public purpose — Acquisition before coming into force of Act — Transitional provisions — Solicitors misconstruing procedural provisions — Notice of appeal not lodged in time — Deposit lodged in time — Whether right of appeal extinguished — Whether delay reasonable — Construction of transitional provisions — Land Acquisition Act, 1966, ss. 23, 54 — Land Acquisition (Appeals Board) Regulations, 1967.

Practice and Procedure — Absence of procedure — Incorrect form — When decided on merit — Duty of appellate court.

This was an interlocutory application made by the appellants under regulation 8 of the Land Acquisition (Appeals Board) Regulations 1967 for permission to proceed with the appeal by virtue of section 23(3) of

the Land Acquisition Act notwithstanding that the notice of appeal was not lodged within the time limited therefor. The questions for the determination of the board were (i) whether the appellants were entitled to make this application despite section 54(5) of the Land Acquisition Act, 1966, under which failure to comply with paragraph (b) of that sub-section extinguished the appellants' right of appeal; and (ii) if so, whether their case warranted the board exercising its discretion in their favour.

Held, allowing the application: (1) the right of appeal of an appellant to whom the provisions of section 54(5)(a) apply is extinguished if he fails to comply with the said provisions and makes no application under section 23(3) of the Act for special permission to proceed with his appeal, but if he makes such an application, his right of appeal is kept alive and is extinguished only if and when his application is rejected by the Appeals Board. The appellants were therefore entitled to make the application that was before the board;

(2) when considering the merits of an application under section 23(3) of the Act, the board must be entirely satisfied that there was no unreasonable delay on the part of the applicant. In this case the appellants lodged the required deposit within time but the notice of appeal was filed after a delay of a few days (13 days) and therefore the case was one where the discretion of the board ought to be exercised in favour of the appellants. Accordingly, permission was given to the appellants to proceed with their appeal notwithstanding that their notice of appeal was not lodged within the time limited therefor.

Per Choor Singh J.: "It must be borne in mind that the provisions of section 23 and 54 of the Land Acquisition Act are clearly procedural and in my opinion they have been framed for the furtherance of justice and not to defeat it and this board should not refuse to act in aid of justice on merely technical grounds. The board should never refuse to grant an application which on the merits it ought to grant and in law it can grant."

Cases referred to:—

(1) *Chia Yew Siang* v. *Collector of Land Revenue* [1930] S.S.L.R. 149.

(2) *Re Application by Ang Leong Seng & Anor.* [1958] M.L.J. 179.

(3) *Gatti* v. *Shoosmith* [1939] 3 All E.R. 919.

INTERLOCUTORY APPLICATION.

Eric Choa for the applicants.

Tan Kim Seng (State Counsel) for the respondent.

Cur. Adv. Vult.

Choor Singh J., Commissioner of Appeals: This is an interlocutory application made by the appellants under regulation 8 of the Land Acquisition (Appeals Board) Regulations 1967 for "permission to proceed with the appeal herein by virtue of section 23(3) of the Act notwithstanding that the notice of appeal was not lodged within the time limited therefor."

The facts of this case are simple and are not in dispute but in order to fully appreciate the merits of this application which is in the nature of a test case it is necessary to set out the facts in some detail. The appellants are the legal personal representatives of the late Tan Chwee Boon who was the registered owner of Lot 100-10 pt. of Mukim III containing an area of 7,875 square feet (hereinafter referred to as "the land"). On the 12th November, 1965, there was published in the *Government Gazette* a declaration made under section 5 of the Land Acquisition Ordinance (Cap. 248) to the effect that the land was required by Government for a public purpose. Proceedings for the acquisition of the land were taken in due course and the Collector of Land Revenue held the usual inquiry in compliance with the provisions of section 10 of the Land Acquisition Ordinance (Cap. 248). On the 23rd June, 1966, the collector awarded a sum of $9,450 as compensation in respect of the land acquired. On the 26th July, 1966, the appellants' solicitors wrote to the collector informing him that their clients were not accepting the award of $9,450 and requested him to refer the matter for the court's determination under section 19 of the Land Acquisition Ordinance (Cap. 248).

At the date of the collector's award that is, 23rd June, 1966, there was in force the Land Acquisition (Amendment) Ordinance, 1964, and section 2 of that Ordinance provided as follows:—

"During the continuance in force of this Ordinance —

(a) no person interested shall be entitled to require the collector, under the provisions of subsection (1) of section 19 of the Land Acquisition Ordinance, to refer the matter for the determination of the court."

Accordingly by virtue of the above provisions the collector could not in law be required to refer the matter for the court's determination and although the appellants' solicitors did in fact request him to do so, he did nothing about it. The matter lay in abeyance until the coming into force of the Land Acquisition Act, 1966 which repealed the Land Acquisition Ordinance (Cap. 248) and the Land Acquisition (Amendment) Ordinance, 1964.

The Land Acquisition Act, 1966, came into force on the 17th June, 1967, and on the same day the collector wrote to the appellants' solicitors as follows:—

"With reference to your written application made on 26th July, 1966, requiring the matter of the award made on 23rd June, 1966 in respect of the land noted below to be referred to court, please note that the said application will not be taken cognizance of as it was made during the continuance in force of the Land Acquisition (Amendment) Ordinance, 1964, under which you were not entitled to require the collector to refer the matter for the determination of the court.

2. I am now to inform you that the Land Acquisition Act, 1966 (No. 41 of 1966) has been brought into operation on 17th June, 1967.

3. By virtue of the provisions of sub-section (5) of section 54 of the Land Acquisition Act, 1966, you may appeal to the Appeals Board constituted under this Act

by complying with the said provisions. A copy of this section is attached.

4. If you wish to lodge an appeal the amount of deposit required of you is $3,150."

On 12th July, 1967, the appellants' solicitors sent a cheque for $3,150 to the Accountant-General, Singapore, "in payment of the deposit as required by section 23(1)(b) of the Act". A copy of the letter forwarding the cheque was sent to the Registrar of the Appeals Board. On the 26th July, 1967, the registrar wrote to the appellants' solicitors, *inter alia*:—

"3. I have so far not received any notice of appeal in respect of the above matter, although it is believed that a deposit of $3,150 has been made with the Accountant-General. The said Act having been brought into operation on the 17th day of June, 1967, the statutory period for lodging the notice of appeal is now over. It is therefore regretted that your client's right of appeal should be extinguished by operation of the provisions of section 54(5)(b) of the said Act which reads as follows:—

'The right of appeal under section 23 of this Act of any person interested to whom the provisions of paragraph (a) of this subsection apply, who fails to comply with the said provisions, shall be extinguished.'

4. Kindly supply me with the particulars of the Accountant-General's receipt for the deposit so that arrangements may be made for the refund of the same."

On the 28th July, 1967, the appellants' solicitors replied as follows:—

"We acknowledge receipt of your letter dated the 26th instant.

After careful consideration of section 54(5)(a) of the Act we agree with you that a written notice of appeal should have been lodged at the same time as the payment of the required deposit. Omission to do this was due entirely to our misunderstanding of the transitional provisions of section 54(2) and 54(5).

In the circumstances we now lodge herewith the written notice of appeal, in quintuplicate, (in triplicate) together with an application under regulation 8 for the board's permission to proceed with the appeal by virtue of section 23(3) of the Act notwithstanding that the said notice of appeal was not lodged within the time limited therefor.

Kindly fix a date for the hearing of the said application before the board."

The written application under regulation 8 is in the following terms:—

"LAND ACQUISITION ACT, 1966 (ACT 41 OF 1966)
(Section 23(3))

LAND ACQUISITION (APPEALS BOARD) REGULATIONS 1967
Regulation 8

In the matter of the land known as Lot 100-10 pt. Mukim III acquired by Government under Gazette Notification No. 2681 dated 12th November 1965.

The Registrar,
Appeals Board (Land Acquisition)
High Court,
Singapore.

We, Yap Suat Tee, Tan Gim Mui and Tan Kay Thye all of No. 385 Pasir Panjang Road, Singapore, and Cherie See Cheng Choo of No. 21 St. Martins Drive, Singapore, the legal personal representatives of the late Tan Chwee Boon (deceased), the lawful owner of the abovementioned land, hereby apply to the board for permission to proceed with the appeal herein by virtue of section 23(3) of the abovementioned Act notwithstanding that the notice of appeal was not lodged within the time limited therefor on the following grounds:

1. On the 26th July 1966 a written application to the collector requiring the matter of his award to be referred to court was made on behalf of the appellants. Xerox copies of the said written application and the collector's reply are hereto annexed.

2. On the 12th July 1967 the appellants made a deposit of $3,150 with the Accountant-General which deposit was made within the statutory period.

3. Relying on section 54(2)(1) which says that 'the written application shall be deemed to be a written notice of appeal' the appellants' solicitors did not consider it necessary to lodge a written notice of appeal as they were under the impression that the written application made on the 26th July 1966 as aforesaid was sufficient for the purposes of section 23(1)(a) of the Act.

4. The omission to lodge the written notice of appeal at the same time as the payment of the required deposit was, therefore, due entirely to the appellants' *bona fide* misinterpretation of the transitional provisions contained in section 54 of this new legislation which only recently came into force.

5. A copy of this application has been served upon the Collector of Land Revenue, Singapore.

Dated this 28th day of July, 1967."

On the 16th August, 1967, the collector sent a written notice of objection to the Registrar of the Appeals Board in pursuance of regulation 8(5) of the Land Acquisition (Appeals Board) Regulations, 1967. The notice of objection is in the following terms:—

"NOTICE OF OBJECTION

With reference to the interlocutory application dated 28th July 1967 of Messrs. Oehlers & Choa, solicitors for the appellants a copy of which was received by me on 29th July 1967, I hereby object to the said application for permission to proceed with the appeal under regulation 8(5) of the Land Acquisition (Appeals Board) Regulations, 1967, on the following grounds:—

(1) A letter dated 17th June, 1967 was sent to their solicitors, Messrs. Oehlers & Choa at 20 Malacca Street, informing them that the Land Acquisition Act, 1966 (No. 41 of 1966) had been brought into operation on 17th June, 1967 and that by virtue of tht provisions of section 54(5) of the said Act, they may appeal to the Appeals Board by complying with the said provisions. A copy of the said letter is annexed hereto.

(2) The appellants have failed to file the notice of appeal within the statutory period as provided by section 54(5) of the Land Acquisition Act, 1966 and as such the right of appeal under section 23 of the said Act has been extinguished. A copy of this objection has been served upon the appellants' solicitors, Messrs. Oehlers & Choa at No. 20 Malacca Street, Singapore, 1.

Dated this 16th day of August, 1967."

Those are the facts. The appellants having failed to lodge with the Registrar of the Appeals Board a written notice of appeal in quintuplicate within 28 days from the date of the coming into operation of the Act as required by the proviso to section 54(5)(a), now seek to invoke the

provisions of section 23(3) in support of their application for permission to proceed with their appeal notwithstanding that the notice of appeal was not lodged within the prescribed time. As the land was acquired under the Land Acquisition Ordinance (Cap. 248) which has now been repealed and this application is made under the Land Acquisition Act which is now in force, it is necessary to examine the relevant provisions of both enactments.

The material provisions of the Land Acquisition Ordinance (Cap. 248) differ considerably from those of the Land Acquisition Act. And in particular the procedure under the Act in the matter of appeals against the award of a collector is from the point of view of an appellant much more cumbersome. Under the Ordinance, by section 19(1), any person interested who did not accept the award could by written application to the collector, require that the matter be referred by the collector for the determination of the court. Subsection (2) required that "the applicant shall state specifically the grounds on which objection to the award is taken". Subsection (3) provided, *inter alia,* that every such application shall be made within six weeks of receipt of notice of the award. And subsection (4) which was added in 1933 presumably in consequence of the decision of the High Court in *Chia Yew Siang* v. *Collector of Land Revenue* [1] provided as follows:—

> ". . . the period of six weeks prescribed by para. (2) of sub-section (3) and the periods of six weeks and twelve months prescribed by paragraph (b) of sub-section (3) shall not be capable of enlargement by any court".

The effect of the enactment of subsection (4) was that if a landowner failed to make a written application within six weeks, requiring the collector to refer the matter for the court's determination, he lost his remedy. See *Re Application by Ang Leong Seng & Anor.* [2]

Under the Land Acquisition Act, any person interested, who is aggrieved by an award by the Collector of Land Revenue may appeal to the Appeals Board constituted under section 19 of the Act. This right of appeal is conditional and is subject to the appellant complying with the following three conditions:—

(a) lodging with the Registrar of the Appeals Board, within fourteen days of the date of the receipt of the collector's award, a written notice of appeal, in the prescribed form, in quintuplicate;

(b) depositing with the Accountant-General within fourteen days of the date of the receipt of the award a sum equivalent to one-third the amount of the award or five thousand dollars, whichever is less; and

(c) lodging with the Registrar of the Appeals Board within fourteen days of the date on which the grounds of award of the collector have been served upon the appellant, a petition of appeal in quintuplicate containing a statement of the grounds of appeal.

And section 24 provides that if the required deposit is not deposited with the Accountant-General within the time specified or if the petition of appeal is not lodged within the prescribed time, the appeal shall be deemed to have been withdrawn. The most relevant provision in so far as this application is concerned, and one on which the appellants rely entirely, is subsection (3) of section 23 which reads as follows:—

> "(3) The board may, in its discretion and on such terms as it may see fit, permit any person to proceed with an appeal notwithstanding that the notice of appeal or petition of appeal was not lodged within the time limited therefor by this section, if it be shown to the satisfaction of the board that such person was prevented from lodging such notice or petition in due time owing to absence from Singapore, sickness or other reasonable cause and that there has been no unreasonable delay on the part of such person."

Then there are transitional provisions laid down in section 54 and as these are very relevant to this application it is necessary to set them out in full:—

> "54. (1) Where a declaration has been made before the coming into operation of this Act under the provisions of subsection (1) of section 5 of the Land Acquisition Ordinance, but an inquiry under the provisions of section 10 of the said Ordinance has not been held, the declaration shall be deemed to have been made under this Act and on the date of the coming into operation of this Act.
>
> (2) Where a person interested has, before the coming into operation of this Act, by written application to the collector required the matter of the award of the collector which he has not accepted to be referred to court under the provisions of subsection (1) of section 19 of the Land Acquisition Ordinance and —
>
> (a) if the collector has not referred the matter to court —
>
> (i) the written application shall be deemed to be a written notice of appeal under the provisions of paragraph (a) of subsection (1) of section 23 of this Act;
>
> (ii) the deposit required under the provisions of paragraph (b) of subsection (1) of section 23 of this Act shall be deposited within twenty-eight days of the date of a written notice by the collector;
>
> (iii) the petition of appeal required to be lodged under the provisions of paragraph (c) of subsection (1) of section 23 of this Act shall be lodged within fourteen days of the date on which the grounds of award of the collector have been served upon the appellant; and
>
> (b) if the collector has referred the matter to the court and proceedings have not commenced for the determination of such matter —
>
> (i) the proceedings shall be deemed to have been withdrawn with the leave of the court; and
>
> (ii) the proceedings shall be deemed to be transferred to the board as an appeal under the provisions of section 23 of this Act, but the appellant shall not be required to comply with the provisions of subsection (1) of section 23 of this Act.
>
> (3) For the purposes of paragraph (b) of subsection (2) of this section, proceedings shall be deemed not to have commenced in any case where the hearing for the

determination of such matter has not commenced on the date of the coming into operation of this Act.

(4) An appeal to the board by virtue of the provisions of paragraph (a) of subsection (2) of this section shall be deemed to have been withdrawn if the provisions of subparagraph (ii) or (iii) of paragraph (a) of subsection (2) of this section have not been complied with.

(5) (a) Any person interested who was precluded during the continuance in force of the Land Acquisition (Amendment) Ordinance, 1964, from requiring the collector under the provisions of subsection (1) of section 19 of the Land Acquisition Ordinance to refer the matter for the determination of the court may appeal to the board in the manner provided by section 23 of this Act.

Provided that for the purposes of this subsection, the period for the written notice of appeal and for the deposit under the provisions of paragraphs (a) and (b) of subsection (1) of section 23 of this Act shall be twenty-eight days from the date of the coming into operation of this Act and the period for lodging the petition of appeal under the provisions of paragraph (c) of subsection (1) of section 23 of this Act shall be fourteen days from the date on which the grounds of award of the collector have been served upon the appellant.

(b) The right of appeal under section 23 of this Act of any person interested to whom the provisions of paragraph (a) of this subsection apply who fails to comply with the said provisions, shall be extinguished.

(6) In the case of any appeal arising out of any award made by the collector prior to the coming into operation of this Act under the Land Acquisition Ordinance or the Land Acquisition (Temporary Provisions) Ordinance 1955, the Appeals Board shall, in determining the amount of compensation to be paid, have regard to the factors determining compensation at the material date as provided in the said Ordinances."

The difficulties of the appellants are due partly to the fact that when the collector's award was made there was in force the Land Acquisition (Amendment) Ordinance, 1964, and partly to the fact that when the Land Acquisition Act, 1966, came into operation their solicitors misconstrued the provisions of section 54 of the Act. As stated earlier when the collector made his award, the appellants' solicitors wrote to him informing him that their clients were not accepting the award and requested him to refer the matter for the court's determination under section 19 of the Land Acquisition Ordinance. But unfortunately for the appellants the provision of section 19 of the Land Acquisition Ordinance had been suspended by section 2 of the Land Acquisition (Amendment) Ordinance, 1964, and the appellants were precluded from making such a request. Had the request for the court's determination been made before the coming into force of the Land Acquisition (Amendment) Ordinance, 1964, then such request would, by virtue of the provisions of paragraph (i) of subsection (2) (a) of section 54 of the Land Acquisition Act, have been deemed to be a written notice of appeal as required by paragraph (a) of subsection (1) of section 23 of the Act. And as the appellants had made the required deposit with the Accountant-General within the prescribed period, they would have had no difficulty in proceeding with their appeal. But as the Land Acquisition (Amendment) Ordinance, 1964, was in force when the collector made his award, the provisions of paragraph (1) of subsection (2) (a) of section 54 of the Land Acquisition Act, are not applicable to the appellants' case and cannot be invoked by them.

With the coming into operation of the Land Acquisition Act, 1966, on the 17th June, 1967, the appellants were granted a right of appeal against the collector's award but unfortunately for them this time their solicitors misconstrued the transitional provisions of the Act and failed to file a notice of appeal within the specified time. Their solicitors thought that the provisions of section 54(2) were applicable to the appellants' case whereas the true position is that the appellants' case falls within the provisions of section 54(5) of the Act.

The first question that I have to decide is whether or not the appellants are entitled to make this application for it is contended by counsel for the respondent that the appellants having failed to comply with the provisions of paragraph (a) of subsection (5) of section 54 of the Act, their right of appeal has been extinguished by virtue of the provisions of paragraph (b) of the same subsection and that they are therefore not entitled to make this application. Counsel's argument is as follows. A person who was precluded during the continuance in force of the Land Acquisition (Amendment) Ordinance, 1964, from requiring the collector under the provisions of subsection (1) of section 19 of the Land Acquisition Ordinance to refer the matter for the determination of the court may appeal to the Appeals Board against the award of the collector but this right of appeal is granted for a limited period only and if not exercised during that period, it is extinguished. In such cases the Appeals Board has no statutory power to enlarge time because section 54 which applies to such cases does not incorporate all the provisions of section 23 of the Act. A person to whom section 54(b) applies, as in this case, is precluded from making an application under subsection (3) of section 23 for extension of time because of section 54(5)(b). Paragraph (b) of subsection (5) of section 54 expressly extinguishes the right of an appellant to appeal if the notice of appeal and deposit are not filed within time. The right to appeal is revived for a limited period and if one does not appeal during that period in the manner laid down in section 23 the right is extinguished. The expression "in the manner provided by section 23" which appears in section 54(5)(a) means by complying with the three conditions laid down in section 23, *i.e.* by lodging a notice of appeal, depositing the required amount of money and lodging the petition of appeal. The expression

does not give an appellant to whom section 54(5)(a) is applicable the right to invoke subsection (3) of section 23. The provisions with respect to them in paragraph (a) of subsection (5) of section 54 are obligatory and the board had no power under section 54 to enlarge time. Had the Legislature intended to vest such power in the board, the provisions of subsection (3) of section 23 would have been reproduced in section 54 and as this has not been done the board has no jurisdiction to extend time. The discretion of the board under subsection (3) of section 23 is statutory and it has no inherent jurisdiction.

I am unable to accept the submission made by counsel for the respondent. Suppose for purposes of argument that the appellants were in some distant country on the date the Land Acquisition Act came into operation and that they returned to Singapore shortly after the expiry of the time limited for the lodging of the notice of appeal. Does it mean that having failed in such circumstances to lodge their notice of appeal within the prescribed time, they would be deprived of their right of appeal even though the Legislature has expressly vested in the Appeals Board by subsection (3) of section 23 of the Act a discretion to permit an appellant in such circumstances to proceed with his appeal? If the contention of counsel for the respondent is correct, it would mean that the provisions of subsection (3) of section 23 can be invoked only by an appellant whose land is acquired after the coming into operation of the Land Acquisition Act and not by a person whose land was acquired before the Act came into operation. In my opinion there is more reason for the provisions of subsection (3) of section 23 to be made available to a person whose land was acquired before the coming into operation of the Act because in the first place his right to appeal was suspended for a long time and he was in no position to know when it would be restored. Secondly when it was restored it was restored suddenly without notice. Thirdly, with the Land Acquisition Act coming into operation there was a fundamental change in the procedure relating to appeals against the award of a collector. The procedure is entirely new and the transitional provisions of the Act are such that many legally trained professional men failed to understand them, for the appellants' solicitors are not the only solicitors who misconstrued those provisions. In my opinion it could not have been the intention of Parliament that the provisions of subsection (3) of section 23 should be available only to persons whose lands are acquired after the coming into operation of the Act and not to all those whose lands were acquired before the Act came into operation because there is no reason why the former class of persons should receive better treatment than the latter. Such discrimination on the part of Parliament is inconceivable. Parliament's intention is clear. By enacting subsection (3) of section 23, Parliament has reversed the position obtaining under the repealed Ordinance. Whereas by enacting subsection (4) of section 19 of the Land Acquisition Ordinance, the then Legislature had ousted the jurisdiction of the court to enlarge time, Parliament has by subsection (3) of section 23 of the Act expressly vested in the Appeals Board a statutory discretion to permit an appellant to proceed with his appeal even though he is appealing out of time. This is a clear indication of Parliament's intention to avoid injustice to any appellant.

It seems to me that the transitional provisions laid down in section 54 of the Act must be read together with the provisions of section 23. Section 54 expressly provides that a person to whom the transitional provisions apply may appeal to the Appeals Board "in the manner provided by section 23 of this Act" and the expression "in the manner provided by section 23" cannot in my opinion be given the restricted meaning suggested by counsel for the respondent. When section 23 is read as a whole, it is clear that apart from the normal manner in which an appellant may appeal, *i.e.* by complying within the limited time with the three conditions laid down therein, there is a special manner laid down in subsection (3) and that is by obtaining the special permission of the Appeals Board. In my opinion the provisions of subsection (3) of section 23 are of general application and they are available to and can be invoked by every appellant regardless of the fact whether his land was acquired before or after the coming into operation of the Act, provided of course he can make out a case which falls within the terms of the subsection. In my opinion the provisions of paragraph (b) of section 54(5) cannot be read in isolation from the provisions of subsection (3) of section 23. In my judgment, the right of appeal of an appellant to whom the provisions of paragraph (a) of subsection (5) of section 54 apply is extinguished if he fails to comply with the said provisions and makes no application under subsection (3) of section 23 of the Act for special permission to proceed with his appeal, but if he makes such an application, his right of appeal is kept alive and is extinguished only if and when his application is rejected by the Appeals Board. Any other construction of the transitional provisions of the Act would, I am sure, lead to many glaring injustices. For the above reasons I hold that the appellants are entitled to make the application that is now before this board.

Counsel for the respondent submitted that even if the appellants are entitled to make this application, it should be rejected because the appellants have not made out a case to warrant the board exercising its discretion in their favour. Counsel pointed out that on 17th June, 1967, when the Land Acquisition Act came into opera-

tion, the collector wrote to the appellan+s' solicitors and drew their attention to the provisions of section 54(5) of the Act and they were informed that their clients could appeal by complying with the provisions of that section. Counsel argued that the discretion vested in the board under subsection (3) of section 23 is a limited one; that the operative words in that subsection are "absence from Singapore, sickness and other reasonable cause"; that the expression "other reasonable cause" must be given a restricted meaning, namely, something personal to the applicant and that a mistake by a solicitor is not covered by that expression.

I am unable to accept this submission. I see no reason why the expression "other reasonable cause" should be given a restricted meaning. The only qualification of any "other" cause is that it must be a reasonable cause having regard to all the circumstances of the case.

In England, the Court of Appeal has held that the fact that omission to appeal in due time was due to a mistake on the part of a legal adviser, may be a sufficient cause to justify the court in exercising its discretion to extend time. In *Gatti* v. *Shoosmith*,[3] Sir Wilfred Greene, M.R. after reviewing all the relevant decisions observed, at page 919:—

> "What I venture to think is the proper rule which this court must follow is: that there is nothing in the nature of such a mistake to exclude it from being a proper ground for allowing the appeal to be effective though out of time; and whether the matter shall be so treated must depend upon the facts of each individual case. There may be facts in a case which would make it unjust to allow the appellant to succeed upon that argument."

It must be borne in mind that the provisions of section 23 and 54 of the Land Acquisition Act are clearly procedural and in my opinion they have been framed for the furtherance of justice and not to defeat it and this board should not refuse to act in aid of justice on merely technical grounds. The board should never refuse to grant an application which on the merits it ought to grant and in law it can grant.

When considering the merits of an application under subsection (3) of section 23 of the Act, there is one special point on which the board must be entirely satisfied and that is that there has been no unreasonable delay on the part of the applicant. In this case, the Act having come into operation on the 17th June, 1967, the appellants had 28 days from that date to file their notice of appeal. The last day for filing the notice of appeal was therefore the 15th July, 1967. The appellants' solicitors filed the notice of appeal on the 28th July, 1967. The period involved is a very short time, it is only a matter of a few days, and it must be remembered that the appellants' solicitors, within time, lodged the required deposit.

On the facts of this case, it appears to me that the case is one where the discretion of the board ought to be exercised, and, accordingly, permission is given to the appellants to proceed with their appeal notwithstanding that their notice of appeal was not lodged within the time limited therefor.

There will be no order for costs.

Application granted.

Solicitors: *Oehlers & Choa.*